

Notice  
of  
Rulemaking

99-00645

Tennessee Regulatory Authority

There will be a hearing before the Tennessee Regulatory Authority to consider the promulgation of rules pursuant to Tennessee Code Annotated, Section 65-2-102 and Chapter 478 of the Public Acts of 1999. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Hearing Room of the Tennessee Regulatory Authority Building, 460 James Robertson Parkway, Nashville, Tennessee at 9:00 a.m. on the 20th day of October, 1999.

Any individuals with disabilities who wish to participate in these proceedings should contact the Tennessee Regulatory Authority to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the agency's ADA Coordinator at 460 James Robertson Parkway Nashville, TN 37243-0505, and (615) 741-2904.

For a copy of this notice of rulemaking hearing, contact K. David Waddell, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN, and (615) 741-22904.

Substance of Proposed Rules

Chapter 1220-4-11  
Regulations of Certain Telemarketing Practices

New Rules

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1220-4-11-.01 Definitions

- (1) "Act" refers to Chapter 478 of the Public Acts of 1999.
- (2) "ADAD" means automatic dialing and announcing device that is used to dial telephone numbers and play automated verbal messages when the calls are answered.
- (3) "ADAD Operator" means a person or business that uses an automatic dialing and announcing device.
- (4) "ADAD Permit" means a document reflecting that a person or business has been approved by the Authority to use ADAD equipment.
- (5) "Applicant" means a person who applies to the Tennessee Regulatory Authority to be placed on the Tennessee Do Not Call Register.
- (6) "Authority" means the Tennessee Regulatory Authority.
- (7) "Authorized telemarketer," means a telemarketing company that has met the requirements of this Rule Chapter to solicit Tennessee telephone subscribers.
- (8) "Business Telephone Subscriber" means a person or company who has subscribed to a business telephone service from a local exchange carrier.
- (9) "Caller identification service or caller ID" means telephone service that displays the listed name and telephone number of the calling number on equipment owned by the called party.
- (10) "Charitable organization" means an organization registered with the Tennessee Secretary of State for the purposes of soliciting contributions from or within the state, or have funds solicited on its behalf as required in T.C.A. §48-101-504.
- (11) "Database" means a list of telephone numbers of residential telephone subscribers who elect not to be telemarketed. The database shall be maintained by the Authority, or its designee, for the purpose of fulfilling Chapter 478 of the Public Acts of 1999.

- (12) "DCR Coordinator" refers to the individual employed by the Authority to oversee the regulation of telemarketing practices, including the operations of the Do Not Call Register, delegated to the Authority by the General Assembly in Chapter 478 of the Public Acts of 1999 and T.C.A. § 47-18-1501.
- (13) "Division" refers to the Consumer Services Division.
- (14) "Do Not Call Register or Register" means a list of residential telephone subscribers who have requested from the Authority that their telephone numbers not be solicited by telemarketers.
- (15) "Independent telemarketing contractor" means a person or business that is employed by an authorized telemarketer for the purpose of soliciting or disseminating information over the telephone for the authorized telemarketing company. The existence of a business relationship as confirmed by a contract between the authorized telemarketer and the independent telemarketing contractor serves as evidence of the relationship.
- (16) "Inter exchange carrier," means a company that is certificated by the Authority to provide long distance toll telephone service.
- (17) "Local exchange carriers" includes telecommunications service providers and competing telecommunications service providers as defined in T.C. A. §65-4-101, as well as telephone cooperatives and wireless telecommunications providers operating in Tennessee.
- (18) "Not-for-profit" means an organization that is exempt from paying taxes under Section 501(c) of the Internal Revenue Code.
- (19) "Residential subscriber" means a person who has subscribed to residential telephone service from a local exchange carrier or the other persons living, residing or visiting such person.
- (20) "Telemarketer" means any natural person, firm, organization, partnership, association or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded messages devices or by a live person.
- (21) "Telephone solicitation" means any live voice communication over a telephone for the purposes of encouraging the purchase or rental of, or investment in, property, goods, or services, originating from Tennessee or elsewhere but does not include voice communications to any residential subscriber with that subscriber's prior express permission. This definition does not include communications made on

behalf of a not-for-profit organization exempt from paying taxes under Section 501(c) of the Internal Revenue Code or by a business that makes less than three (3) such voice calls to Tennessee residential telephone subscribers within any one (1) calendar week using its own employees.

Authority: T. C. A. §§ 65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.

#### 1220-4-11-.02 General Telemarketing Regulations

- (1) No telemarketing solicitation or ADAD message may occur prior to 8:00 a.m. and after 9:00 p.m. (local time at the called party's location).
- (2) All telemarketing companies must maintain a "Do Not Call" register made up of those telephone subscribers who wish not to be telemarketed.
- (3) Persons or companies planning to telemarket Tennessee residential subscribers are required to purchase from the Authority the database and refrain from calling those telephone numbers on the database, unless exempted by state law.
- (4) All telemarketing messages shall at the beginning of the call state the name of the person and the organization initiating the call as well as meet the following requirements:
  - (a) ADAD messages must state the name of the person twice, once at the beginning and again at the end of the message, as well as the telephone number of the person or organization initiating the call within the first 25 seconds of the beginning of the call.
  - (b) Live telemarketers must provide the telephone number where the call is originating, when requested by the called party.
- (5) Telemarketing companies and their independent telemarketing contractors are prohibited from using telephone equipment or purchasing telecommunications network elements from local exchange carriers that block the caller ID function on the telephone number dialed so that the telephone number and name of the caller is not displayed on the telephone equipment of the called party.
- (6) Local exchange carriers and inter exchange carriers are prohibited from providing any network services to telemarketing companies that would block the display of the telemarketers name and telephone number on the called party's caller ID equipment. Local exchange carriers and inter exchange carriers shall modify their tariffs to reflect the requirements of this Rule Chapter within sixty (60) days of its

effective date.

- (7) No local exchange carrier or inter exchange carrier shall provide either local exchange service or toll service to a customer if that customer uses an ADAD in violation of state law or this Rule Chapter.
- (8) No person or business shall use ADAD equipment without first obtaining a permit from the Authority as described in this Rule Chapter.
- (9) Violations of this Rule Chapter can result in civil actions prescribed by law, which include fines payable to the Authority.
- (10) Any charitable organization or an agent acting on its behalf engaged in telemarketing shall register with the Tennessee Secretary of State as prescribed in T.C.A. §48-101-504.
- (11) Telemarketing companies must adhere to state and federal statutes regarding telemarketing practices, including, but not limited to, the Tennessee Consumer Protection Act.
- (12) Telemarketing companies shall within ten (10) days, after receipt of a complaint forwarded by the Authority, file a written response, with the Authority.

Authority: T. C. A. §§ 65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.

#### 1220-4-11-. 03 Authorization to Operate ADAD Equipment

- (1) Any person or business using an ADAD to call telephone numbers located in Tennessee for the purpose of conducting a poll, soliciting information, advertising or offering to sell, lease, rent, or give away any goods, services, real or personal property must obtain an ADAD permit issued by the Authority. A separate permit must be obtained for each ADAD. In order to obtain a permit, the ADAD operator must complete and file with the Authority an ADAD permit application form. Blank forms may be obtained on the Authority's Web Page found at [www.state.tn.us/tra](http://www.state.tn.us/tra) or by writing:

Consumer Services Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Authority: T. C. A. §§ 65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.

1220-4-11-. 04 Application for Authorization to Operate ADAD Equipment

- (1) The ADAD application form shall contain the following information:
  - (a) The operator's name, address, and telephone number;
  - (b) The name and address of a designated agent for service of process in Tennessee;
  - (c) A copy of a Tennessee business license or a copy of a foreign corporation authorization from the Tennessee Secretary of State;
  - (d) A ten thousand dollars (\$10,000) institutional surety bond. Such bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in Tennessee;
  - (e) A notarized statement from the operator indicating that he/she will comply with state law and this Rule Chapter when operating the ADAD;
  - (e) Any additional information requested by the DCR Coordinator in order to determine whether the permit should be granted.
- (2) The application must be accompanied by a \$25 filing fee plus a two (2) year registration fee of \$100. If the application for authority is denied, the Authority will refund the \$100 registration fee.
- (3) Upon receiving a completed application and filing fee and upon determining that the ADAD will be operated in compliance with state law and the Authority's rules, the DCR Coordinator shall grant the application. Failure to complete the application or provide additional information requested by the DCR may result in the denial of the application.
  - (a) If no action is taken within forty-five (45) business days from the date the application is received by the division, the application shall be deemed approved.
  - (b) Any person aggrieved by the Coordinator's ruling on an application may appeal to chief of the division then directly to the Authority by requesting a hearing before the Authority.

Authority: T. C. A. §§ 65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.

1220-4-11-. 05 Issuance of ADAD Permit

- (1) Upon approval of the application, the DCR Coordinator, acting on behalf of the Authority, will issue the ADAD operator a permit that will be valid for two (2) years.
- (2) If the information contained in the application changes during the time the permit is in effect, the ADAD operator must notify the Authority in writing within forty-five (45) business days from the effective date of the change.
- (3) The Authority may suspend or revoke an ADAD operator's permit upon finding that the operator has violated state law or the Authority's rules.

Authority: T. C. A. §§ 65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.

1220-4-11- .06 Authority Inspection of ADAD Compliance

- (1) In order to determine whether an ADAD operator is complying with state law and the Authority's rules, the division may inspect the ADAD operator's facilities, require the ADAD operator to file a tape recording of a typical call made using the ADAD, and request whatever additional information the DCR Coordinator needs to make his/her determination.

Authority: T. C. A. §§ 65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.

1220-4-11-.07 ADAD Rule Requirements

- (1) Any ADAD that has, or is required to have, an ADAD permit from the Authority must operate in accordance with the following service requirements as well as the requirements found in 1220-4-11-.02 of this Rule Chapter.
  - (a) An ADAD may not be operated without a person attending the equipment nor may the ADAD be designed to operate without an attendant.
  - (b) No ADAD shall deliver a recorded message without the oral or written consent of the person receiving the call. A live operator must obtain oral consent before the recorded message is played. Written consent will be considered valid for two years, but may be withdrawn by sending a letter to the ADAD operator.
- (2) No ADAD may be used to dial telephone numbers at random or in numerical

sequence, to call unpublished numbers, or to call health care facilities, fire protection or law enforcement agencies.

- (3) No ADAD may be used to solicit calls to any telephone number if a fee is charged for calling the number.
- (4) The recorded message played by an ADAD must clearly state, at least twice, the name and telephone number of the person or business responsible for the contents of the recorded message. The identification must be made within 25 seconds of the beginning of the call and at the end of the call.
  - (a) The telephone number identified in the message must readily accessible by having someone who is willing and able to provide information concerning the message during normal business hours.
- (5) If the person receiving an ADAD call does not consent to hear the recorded message or hangs up the telephone, the ADAD operator or ADAD equipment must hang up within ten seconds.

Authority: T. C. A. §§ 65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.

#### 1220-4-11-. 08 Penalty for Violation of ADAD Requirements

- (1) Any person or business using an ADAD to make calls to telephone numbers in Tennessee without an ADAD permit commits a Class A misdemeanor and is also subject to a civil penalty of \$1,000 for each illegal call as prescribed by T.C.A. §47-18-1501.
- (2) Any public utility, which is found to be in violation of this Rule Chapter by the Authority, may also be subject to the penalty prescribed in T.C.A. §65-4-120.

Authority: T. C. A. §§ 65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.

#### 1220-4-11-. 09 Exceptions for ADAD Use

- (1) Nothing in these rules is intended to apply to:
  - (a) ADAD calls made to customers who have previously ordered goods or services within the prior twelve (12) months from the ADAD operator or



his or her principal;

- (b) ADAD calls relating to the collection of lawful debts;
- (c) ADAD calls made by a school concerning student attendance, including the cancellation of school for snow or other reasons; or
- (d) ADAD calls made in response to a request from the person to whom the call is directed.
- (e) ADAD call made for the exclusive purpose of warning residential telephone subscribers of emergency situations such as the threat of severe weather or other such events. The purpose of these kinds of calls is to warn the public rather than market the public goods or services.

Authority: T. C. A. §§ 65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.

#### 1220-4-11-.10 Maintaining The Tennessee Do Not Call Register

- (1) The Authority shall maintain a register of names, address and telephone numbers of all Tennessee residential telephone subscribers who have elected to not receive telephone solicitations.
- (2) The information contained in the database is not open to public inspection or disclosure as defined under Tennessee Code Annotated Title 10, Chapter 7. The Authority will take all necessary steps to protect the confidentiality of the information in the database.
- (3) The Authority shall include in its Register the list of Tennessee subscribers to the Federal Communications Commission's Do Not Call database.
- (4) The division at the beginning of each month will update the Register.
- (5) Companies wishing to conduct telemarketing in the state must apply to the Authority for a copy of the Tennessee Do Not Call Register as described below.

Authority: T.C.A. §65-2-102 and Chapter 478 of the Public Acts of 1999.

#### 1220-4-11-.11 Telemarketers Access To The Tennessee Do Not Call Register

- (1) It is the duty of the telemarketers engaging in the solicitation of Tennessee

telephone subscribers to purchase the database from the Authority. Telemarketers shall submit a request in writing to the Authority along with a filing fee of \$25. The request must contain the telemarketer's name, address, telephone number and name of the agent for processing along with a notarized statement from an officer of the company affirming the company will comply with the provisions of this Rule Chapter.

- (2) The following information will be provide to authorized telemarketing companies and their independent telemarketing contractors.
  - (a) The telephone number(s) of Tennessee residential subscribers electing to not receive telemarketing calls.
  - (b) The database shall be provided, with unlimited access, via the Internet to authorized telemarketing companies. It is responsibility of telemarketing companies to ensure they have the latest version of the database prior to soliciting residential telephone subscribers.
  - (c) Paper copies of the Register will be available to telemarketers at the current per page rate as set by the state secretary of state pursuant to T.C.A. §65-1-212.
  - (d) No authorized telemarketing company or their independent telemarketing contractors shall provide the database to telemarketing companies who are not authorized by the Authority to operate in Tennessee.
- (3) Telemarketing companies shall pay to the Authority an annual fee of \$500 to have Internet access to the database.
  - (a) This fee shall be due on or before April 1 of each year. The fee will cover the time period from April 1 through March 31 or any part thereof.
  - (b) The Authority shall render a bill to each telemarketer authorized to conduct business in Tennessee by February 15 of each year.
  - (c) The annual fee of \$500 shall not be prorated for periods of less than one (1) year.
- (4) Independent telemarketing contractors employed by an authorized telemarketer may make application to the Authority to pay a reduced annual fee. The reduced annual fee shall be \$250, if sufficient documentation is produced. Such application shall be made to the DCR Coordinator along with a filing fee of \$25 and documentation, as prescribed by the division, confirming a business relationship exists between the authorized telemarketer and the independent telemarketing

contractor.

- (a) A maximum of five (5) independent telemarketing contractors are allowed per authorized telemarketer.
- (b) The DCR Coordinator shall have the delegated authority to designate the status of an independent telemarketing contractor.
- (c) Any person aggrieved by the DCR Coordinator's ruling on the status of independent telemarketing contractor may appeal to chief of the division then directly to the Authority by requesting a hearing before the Authority.

Authority: T.C.A. §65-2-102 and Chapter 478 of the Public Acts of 1999.

#### 1220-4-11-.12 Consumer Registration With The Tennessee Do Not Call Register

- (1) The Authority shall establish and provide for the operation of a Register on which to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations. Such Register may be operated by the Authority or by another entity under contract with the Authority. Guidelines for the operation of the Register are described below:
  - (a) Residential telephone subscribers can enroll on the Register by filling out an application form provided by the Authority. The form will include the residential telephone subscriber's name, address and telephone number and any other information deemed appropriate by the DCR Coordinator.
  - (b) A residential telephone subscriber will remain on the Register until he/she requests the Authority remove their name. It is the duty of the residential telephone subscribers to notify the division in the event that their telephone number and/or address is changed.
  - (c) There will be no charge to residential telephone subscribers to be on the Register.
  - (d) Business telephone subscribers may not be included on the Register.
  - (e) The DCR Coordinator may purge the Register periodically in order to ensure accuracy.

Authority: T.C.A. §65-2-102 and Chapter 478 of the Public Acts of 1999.

1220-4-11-.13 Public Education About The Tennessee Do Not Call Register

- (1) Local exchange carriers are required to inform their residential subscribers twice a year how to subscribe to the Register. This notification, which shall accompany the subscribers monthly telephone bill, shall include an application, approved by the division, which residential subscribers can fill out and mail to the Authority.
- (2) Local exchange carriers, working in cooperation with the division, are required to place information on how to subscribe to the Register in their White Page telephone directory. The notification in the directory shall include an application to the Register.
- (3) Local exchange carriers and telemarketing companies and their independent contractors are required to inform residential telephone subscribers on how to enroll on the Register as described below:
  - (a) Inform the residential telephone subscriber that the Authority is the state agency responsible for the Register;
  - (b) Inform the subscriber that an application for the Register is located in the White Page Directory, or if the subscriber states he/she does not have a directory mail the subscriber an application form for the Register.

Authority: T.C.A. §65-2-102 and Chapter 478 of the Public Acts of 1999.

1220-4-11-.14 Violations Of The Tennessee Do Not Call Register

- (1) It is a violation of Chapter 478 of the Public Acts of 1999 and of this Rule Chapter if any telemarketing company or any agent or independent telemarketing contractors acting on behalf of a telemarketing company attempts a telephone solicitation over the telephone with a purpose of soliciting or disseminating information to a Tennessee residential telephone subscriber who has elected to be placed on the Tennessee Do Not Call Register maintained by the Authority unless the following conditions exists:
  - (a) The residential telephone subscriber being solicited had a prior business relationship with the telemarketing company within the previous twelve (12) months prior to the telephone solicitation, or
  - (b) The telephone solicitation is conducted by a non-profit organization, or
  - (c) The telephone solicitation is conducted by a direct employee of a business where the solicitation is occasional and not part of a telecommunications

marketing plan. Occasional is defined as less than three (3) telemarketing calls within one calendar week.

- (2) A violation of this Rule Chapter is subject to a civil penalty, payable to the Authority, of an amount not to exceed \$2000 for each violation. In addition, the Authority may seek additional relief in any court of competent jurisdiction.
- (3) Authorized telemarketing companies shall be held responsible for violations of this Rule Chapter by their independent telemarketing contractors, including, but not limited to, fines and/or revocation of authority to telemarket in Tennessee.
- (4) Violations shall be calculated in a liberal manner in order to protect the public interest and deter similar violations.
- (5) Any local exchange carrier violating any provisions of this Rule Chapter is subject to the penalties prescribed in TCA § 65-4-120.

Authority: T.C.A. §65-2-102 and Chapter 478 of the Public Acts of 1999.

#### 1220-4-11-.15 Enforcement Provisions

- (1) The Authority may, on its own motion, or on the recommendation of the division, or the motion of the Consumer Advocate Division, or any other interested person, order the investigation of the practices of any telemarketing company conducting business in Tennessee. Such investigation shall determine if such telemarketing company or its independent telemarketing contractor has violated Chapter 478 of the Public Acts of 1999, or this Rule Chapter. If such investigation discloses a violation of state law or this Rule Chapter, the Authority shall issue a show cause order with respect to such acts pursuant to T.C.A. §65-2-106.
- (2) Local exchange carriers and inter exchange carriers are required to fully cooperate with the division in any investigation of an alleged violation of this Rule Chapter.

Authority: T.C.A. § 65-2-102 and Chapter 478 of the Public Acts of 1999,.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Regulatory Authority.

K. David Waddell  
K. David Waddell  
Executive Secretary

Subscribed and sworn to before me this the 27 day of August, 1999.

[Signature]  
Notary Public  
My Commission Expires 4-7-03

My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30 day of Aug., 1999.

Riley C. Darnell  
Riley C. Darnell  
Secretary of State

By: [Signature]

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